

**Fair Political Practices Commission
Memorandum**

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

From: John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: Approval of 2006 Regulatory Priorities

Date: December 1, 2005

I. INTRODUCTION AND BACKGROUND

This memorandum outlines the staff's recommendations for the Commission's Calendar Year 2006 rulemaking plan. The rulemaking/project calendar is attached as **Appendix 1** and is consistent with the Commission's stated priorities for next year and the priorities set out in the staff memorandum in October. Consistent with prior work plans, this plan allows for quarterly review and revisions, and attempts to spread the workload as evenly as possible throughout the year. We have also added new items. We have indicated these items with a "**NEW**" or "**CHANGE**" indicator in this memorandum.

In preparing the 2006 calendar, staff has included a total of 20 projects with seven additional "standby" projects. As we have noted previously, the calendar does not reflect other, nonregulatory duties of the Commission. For example, the staff anticipates significant work on advice letters, litigation, opinions, legislation, and various outreach projects which are part of the regular workload of the agency and involve significant time commitments. Consequently, we are also recommending the Commission reduce the work plan by removing some projects.

A. CAMPAIGN PROJECTS

Item 3. Hard And Soft Money Bank Accounts: Section 85303(a) and (b) set calendar year limits on contributions to recipient committees and party committees for the purpose of making contributions to candidates for elective state office. Section 85303(c) provides that there are no limits on contributions to these committees if the contributions are used for purposes other than making contributions to candidates for elective state office. Staff proposes a regulation to implement these requirements, including a regulation requiring these committees to establish a noncandidate support account.

CHANGE: *Pre-notice discussion was delayed to December. The adoption hearing will occur February 2006.*

Item 10. Advertising Disclosure. Sections 84501-84511, originally enacted as part of Proposition 208 in 1996, became effective with the passage of Proposition 34. These sections require state and local ballot measure advertisement to contain disclosures naming major contributors of \$50,000 or more. In addition, broadcast and mass mailing advertisements supporting or opposing candidates and ballot measures that are independent expenditures must identify the committee paying for the advertisement, as well as the committee's major contributors of \$50,000 or more.

In October 2004, the federal district court granted a motion for a preliminary injunction and enjoined the Commission from enforcing these provisions against political party committees registered as general purpose committees. As a result, at its September meeting, the Commission amended regulation 18450.4 to state that general purpose committees are not required to disclose their major contributors when making payments for advertisements.

During the special election, the Technical Assistance Division was asked what advertising disclosure provisions, if any, apply to an advertisement supporting a ballot measure when a general purpose committee pays for an advertisement as a non-monetary (in-kind) contribution from the general purpose committee to the committee primarily formed to support the measure. For example, Primarily Formed Committee A produces a radio advertisement supporting its measure and General Purpose Committee B, rather than making a monetary contribution to Committee A to pay for the ad, makes direct payments to vendors and media outlets. Had Committee B made a monetary contribution to Committee A, Committee A and its major contributors (which may or may not include Committee B) would be identified in the advertisement. Under these circumstances, however, it is not clear if the Act imposes any identification requirements for the advertisement.

***NEW ITEM:** New item added as a result of numerous questions raised before and during the 2005 special election campaign. Pre-notice discussion is planned for April 2006, adoption will be in June 2006.*

B. CONFLICT OF INTEREST DISQUALIFICATION AND DISCLOSURE

Item 2. Proposition 71: Independent Citizen's Oversight Committee (ICOC) and the California Institute for Regenerative Medicine (Institute). Two sections of the new law refer to the PRA (Health & Safety Code §§ 125290.30(g) & 125290.50). Staff proposes to investigate whether Prop 71 amended the Act indirectly, and the FPPC's role in advising/enforcing these provisions.

***CHANGED ITEM:** A prior calendar showed a status memorandum would be provided to the Commission on this matter in October 2005. However, this was delayed because the staff has been involved in reviewing the conflict of interest code submitted by the ICOC. Therefore, this item was deferred to a later date. It is anticipated that a status memorandum will be provided in February 2006.*

Item 3. SB 8: Revolving Door; Local Officials: Commencing July 1, 2006, local officials who held positions with certain local government agencies will be prohibited for one year after leaving office, from contacting their former employer for compensation, for the purpose of influencing administrative or legislative action or an action involving a permit, license, grant, or contract, or the sale or purchase of goods or property.

***NEW ITEM:** As noted at the October hearing, this bill was signed after the agenda material was circulated for the October Commission meeting. This new legislation will require regulatory action and has been added to the 2006 regulation calendar.*

C. ADMINISTRATIVE, ENFORCEMENT, AND OTHER ISSUES

Item 1. Assembly Bill 1234 (Ethics Training For Local Officials): On October 7, 2005, the Governor signed Assembly Bill No. 1234. AB 1234 requires (among other things) that all local agencies that provide compensation, salary, or stipend to, or reimburse the expenses of, members of a legislative body must provide ethics training to local agency officials by January 1, 2007, and every two years thereafter. The term “legislative body” includes not only the governing body of a local agency, but also a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory.

The bill further provides that if an entity develops criteria for the ethics training, the Commission and the Attorney General’s office must be consulted regarding the proposed course content.

***NEW ITEM:** This bill was signed after the initial 2006 regulation proposals were presented to the Commission. We have now added this item to our regulation calendar with anticipated emergency adoption in January.*

Item 2. Precedential Decisions In Enforcement Actions. Section 11425.60 of the APA provides general authority to the Commission to designate decisions as precedential. Enforcement is proposing the Commission consider a regulation establishing a precedential decision system and setting forth various criteria for the Commission to consider in determining whether to designate a decision as precedential.

***CHANGE:** The pre-notice discussion was held in November, rather than October. Thus, the adoption hearing will occur in January.*

D. STANDBY ITEMS

1. Otherwise Related Nonprofit and Mixed Entities: Regulation 18703.1(c) defines a public official’s economic interest in a business entity that is “a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code§ 87103(a) or (d).” These regulations only apply

to business or for-profit entities. However, we have received requests for advice involving officials who also have economic interests in nonprofit entities that are related – usually through a parent or subsidiary relationship (as the term might apply in a nonprofit context). Staff proposes expanding the otherwise related business entities regulation in 18703.1 to include nonprofits or create a separate regulation for nonprofits and mixed entities (related nonprofit and for-profit entities).

2. Regulation 18425: Late Contribution Reports. A “late contribution report” is required during the 16-day period just prior to an election. Prop 34 also added § 85309(a) and (b), which require state candidates and measure committees to file a report within 24 hours if a contribution of \$1,000 or more is received during the 90-day period prior to the election. Staff recommends amending regulation 18425 to allow disclosure of estimated information on these reports.

3. Regulation 18116: Reports & Statements; Filing Dates. Regulation 18116 provides that whenever a filing deadline falls on a weekend or holiday, the deadline is extended to the next business day. The extension does not apply to late contribution and late independent expenditure reports. Staff proposes to amend regulation 18116 to exclude *all reports required to be filed within 24 hours* (including those under §§ 85309 and 85500) from the exception.

4. Regulation 18944.2: Gifts to an Agency. Regulation 18944.2 provides an exception for gifts made to an official’s agency. Four criteria must be met, one of which is “[T]he agency receives and controls the payment.” Staff proposes the Commission amend the regulation to allow the donor to make payments to an airline or hotel, rather than requiring that the agency first receive the payment.

5. § 91013: Late Filing of Statement or Report; Fees. Section 91013 authorizes the Secretary of State, and city and county filing officers, to impose penalties for filing campaign statements late. Section 91013 also authorizes the filing officer to waive such penalties. Staff proposes codifying the Commission’s guidelines for assessing and waiving late fines.

6. “Street Address” Proposal: The Act uses the term “street address” in various sections. Regulation 18421.2 defines the phrase as meaning the building number, street name, city, state, and zip code. This project proposes to amend the definition to include APO’s (Army and Air Force Post Office) or FPO’s (Fleet Post Office) as addresses. The project also explores other clarifying changes to the definition.

7. Reg. 18740: “Privileged Information”: Regulation 18740 permits an official to omit from his or her SEI, sources of income if disclosure of the name would violate a legally recognized privilege. However, while not covered under the regulation, sometimes disclosure of property would create danger for the official. Staff recommends that regulation 18740 be re-drafted to add a provision that allows an exemption from disclosure of real property under such circumstances.

E. DELETED ITEMS

AB 1755 (Campaign and Economic Interest disclosure.) This bill would do the following:

- Repeal two provisions that provide for campaign filings in connection with a March statewide primary election.
- Clarify that a late contribution report is not required to be filed by a candidate or committee that has disclosed the late contribution pursuant to a specified electronic report.
- Clarify that a late independent expenditure report is not required to be filed by a candidate or committee that has disclosed the late independent expenditure pursuant to a specified electronic report.
- Extend, from 30 days to 45 days, the amount of time between the time a person completes a term of office and begins a term of the same office or another office of the same jurisdiction, for which the person is not deemed to have assumed office or left office.
- Clarify that candidates for city treasurer are required to file a statement of economic interests with the city clerk.
- Require candidates for judge to file a statement of economic interests with the person with whom the candidate's declaration of candidacy is filed, instead of filing the statement with the clerk of the court.
- Makes other technical and clarifying changes.

PROPOSE REMOVE: *As noted at the October hearing, this bill was included in the event that the new legislation required regulatory action. However, it does not appear, at this time, that any regulatory interpretation is needed. Thus, we propose removing this item from the 2006 regulation calendar.*

Proposal by Stan Statham (California Broadcaster's Association or CBA): On August 19, 2005, CBA President Stan Statham wrote to the Commission to comment on the Commission's regulatory calendar. Specifically, he complained that the current ballot measure advertising disclosure requires disclosures that are so long as to drive advertising away from radio to other channels, such as print, television, direct mail, etc. He requested the issue be placed on the Commission's agenda for regulatory review to determine if there are ways to alleviate the burden of the lengthy spoken disclosures on radio, suggesting the Commission consider allowing radio advertising to use 800-numbers or web sites for disclosure of the requisite information.

In a nutshell, radio advertisements have two aspects of disclosure. First, advertisements for ballot measures must identify the committee paying for the advertisement. (§ 84504.) The committee is required to name itself using a name or phrase that identifies the “economic or other special interest” of each major donor of \$50,000 or more. (§ 84504.) Second, if the committee is primarily formed, the advertisement also must identify the two largest contributors of \$50,000 or more.¹ (§ 84503.) These disclosures “shall be spoken so as to be clearly audible and understood by the intended public and otherwise appropriately conveyed for the hearing impaired.”

The law is explicit in the type, manner and placement of advertising disclosures in ballot measure radio spots. A regulation permitting the use of 800-numbers or websites would therefore not be permissible because of the unambiguous language of the statutes.

PROPOSE REMOVE: *This item has been added in response to a public request. However, upon review of the statutory scheme regarding disclosures on campaign advertising, staff has concluded that any change with respect to this requirement would require a legislative change. Thus, the comment has been referred to the Commission’s Legislative Coordinator.*

Appendix 1: Regulation Calendar

¹ If the broadcast is 15 seconds or less, only the top contributor over \$50,000 must be disclosed. (§ 84508.)